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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,215	10/18/2001	Helmut Kanzler	4501CON	8013

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/982,215

Applicant(s)

KANZLER ET AL.

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-43 is/are pending in the application.
- 4a) Of the above claim(s) 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30 and 32-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/26/02 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 November 2003 has been entered.

### **Status of application**

2. Claims 30-43 are pending. Claims 1-29 are canceled. The amendment filed with the Request for Continued Examination specifically cancels claims 1-28, but not claim 29. As claim 29 is not presented in the amendment, it is understood to have been canceled. Claim 31 is directed to a species which was non-elected in paper 9, and as such, is withdrawn from consideration.

### **Drawings**

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, all components of the vehicle having a modular construction (claim 35 – emphasis added) and a gear ratio of the snow plow shaft to drive sprocket being adjustable (claim 38) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### **Specification**

4. The specification is objected to under 37 CFR 1.71 because it fails to provide a complete written description of the invention. On page 9, the specification refers to the adjusting of a gear ratio of a snow plow shaft by a potentiometer, however the specification fails to provide any further details as to the structure which would allow

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such an adjustment to be made. On pages 8-10, the specification refers to an optimization of consumption, however, the specification fails to set forth how this optimization is achieved. On page 15, the specification refers to tiltable cab portions and platform portions, but beyond illustrating, schematically only, a single actuator, the specification fails to describe how such tilting cab and platform portions may be constructed and used.

5. The examiner notes that while applicant had proposed the deletion of material associated with certain of these features in the non-entered amendment filed 9/26/03, after final rejection, this amendment was not entered, as clearly set forth in the advisory action, and applicant's papers filed with the Request for Continued Examination did not request the entry of the previous un-entered after-final amendment. It is not clear why these previously proposed amendments were not re-presented, particularly in view of the Advisory action (paper 15, mailed 10/08/03) wherein it was noted that "[i]t appears as though the proposed instances of deletion of certain portions of the specification would be appropriate".

#### **Claim Objections**

6. Claims 30 and 38 are objected to because of the following informalities: in claim 30, line 6, the section of underlining between "more" and "electrohydraulic" should be deleted; in claim 38, line 2, "ration" should be --ratio--.

Appropriate correction is required.

#### **Claim Rejections, 35 USC 112**

7. Claims 35, and 37-42 are rejected under 35 U.S.C. 112; first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 35 refers to all components of the track-laying vehicle having a modular construction, however the specification, while referring to a modular construction scheme, fails to specifically teach

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how all components have a modular construction. Claims 37 and 42 refer to consumption-optimum speed for the engine, however the specification fails to set forth how such an optimization may be achieved, as noted in the specification objections above. Claim 38 recites a gear ratio of the snowplow shaft to drive sprocket being adjustable. The specification fails to teach any gearing connection between the snowplow shaft and the drive sprocket. Note pages 12 and 13, which describe both the snowplow elements (e.g., 6, 18, 19) and drive sprocket components (3, 4, 13, 14) but which describe no geared connection there-between, instead teaching that these elements are operated by separate motors.

8. Claims 30 and 32-43 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph (Claim 31 being directed to a non-elected species and withdrawn from consideration). In claim 30, line 6, the recitation of "one or more" followed directly by the recitation "electrohydraulic and electric accessory drives" is confusing in that it is not clear whether "one or more" is intended to refer to each of the devices (i.e., one or more of each of electrohydraulic and electric accessory drives, thus at least one of each recited device) or the recitation of the electrohydraulic and electric accessory drives is intended to be a group from which one or more is selected. In claim 30, lines 12-13, "that is switched..." is somewhat confusing in view of the recitation of lines 4 and 5-- applicant may desire to recite instead "when said motor is switched..." for clarity; also note claim 32, lines 2-3 wherein the phraseology of the recitation of the motor operating as a generator should be consistent with the recitation of claim 30.

#### **Claims Not Rejected over the Prior Art**

9. Claims 30, 32-43 are not rejected as being unpatentable over or anticipated by the prior art of record, and would not be in condition for allowance until the pending issues addressed under 35 USC §112, first and second paragraphs are resolved. In the case of the independent claims being (a) generic and (b) allowable, applicant would be entitled to consideration of claims directed to non-elected species.

### Response to comments

10. Applicant's comments have been carefully considered. As regards the claim limitations which are not shown in the drawings, applicant is reminded of the following: in paper 9, applicant elected Species I, as illustrated in figures 1 and 3. Figure 2 is not contained with figures 1 and 3. As such it appears as though claim 35 is additionally directed to a non-elected species. Applicant is quite correct to point out that should a generic claim be allowed, applicant would be properly entitled to consideration of material in the non-elected claims. In this case, however, figure 2 would still fail to illustrate the material which is claimed, which is repeated here in part: "wherein all components of said track-laying vehicle have a modular construction". Even should figure 2 be relied upon to show modular construction, it certainly fails to show all components of the vehicle as specifically recited in the claim which applicant has drafted.

Applicant's comments concerning those features which are not disclosed in the specification, but which are deemed to be within the skill of the ordinary practitioner are noted. The examiner suggests that these features: the adjusting of a gear ratio of a snow plow shaft by a potentiometer, an optimization of consumption and the implementation of tiltable cab portions and platform portions are most certainly not trivial mechanical or electrical engineering matters. Applicant has argued that one of ordinary skill does not require a specification "to be encumbered by a detailed description of gear ratio adjustment, consumption optimization and tiltable cab portions and platform portions", however applicant has again provided no evidence of such assertion, nor has applicant provided any evidence whatsoever that these features as well known to an ordinary practitioner working in the field. Arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

As regards claims currently rejected under 35 USC §112, second paragraph, please note that rejections under 35 USC §102 and 103 should not be based upon considerable speculation as to the meaning of the terms employed and assumptions as to the scope of the claims when the claims are not definite. See In re Steele 305 F.2d

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859, 862, 134 USPQ 292, 295 (CCPA 1962). When no reasonably definite meaning can be ascribed to certain terms in a claim, the subject matter does not become anticipated or obvious, but rather the claim becomes indefinite. See *In re Wilson* 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). As such the currently pending claims may be subject to prior art rejections not set forth herein upon the clarification of the claim language.

### Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 703-308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326  
After Final Amendments: 703-872-9327  
Customer Service Communications: 703-872-9325

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**



12/22/03